

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

(Continuation of California Notice Register 2003, No. 22-Z, Meeting of August 2, 2003.)

NOTE: See Updated Informative Digest changes shown in **bold face** type.

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 1050, 7923, 8026, 9154 and 9055 of the Fish and Game Code and to implement, interpret or make specific sections 1050, 4850, 7852.2, 7857, 7923, 8026, 9054 and 9055 of said Code, proposes to amend sections 120.7 and 190, Title 14, California Code of Regulations, relating to the sea urchin fishery and fishing activity records, respectively.

Updated Informative Digest/Policy Statement Overview

Existing regulations prohibit anyone without a valid sea urchin diving permit from diving from a sea urchin vessel during commercial fishing operations.

The proposed regulatory changes would clarify that the Department may authorize non-permitted divers to dive from a sea urchin vessel for the purposes of sea urchin management or research.

Existing regulations specify the conditions that govern sea urchin diving permittees when they are fishing for sea urchins.

In order to provide an economic incentive to divers to participate in a cooperative program to gather data for a long-term time series to assist in the stock assessment of sea urchins, the proposed regulations would, in addition, allow the department to authorize a sea urchin diving permit holder to take, possess, land and/or sell red sea urchins during a closed season or in a closed area, subject to terms and conditions the department may specify. Any data collected during fishing activity conducted under this authorization shall be provided to the department.

Existing regulations require applicants for renewal of sea urchin diving permits to have made at least 20 landings of at least 300 pounds each in one of the two immediately preceding permit years.

The proposed regulatory changes would repeal that minimum landing requirement for permit renewal.

Existing regulations establish the deadlines for late renewal of a sea urchin diving permit.

The proposed regulatory changes would add one day to that deadline to conform to statute.

Existing regulations establish the number of new sea urchin permits to be made available when either more than or less than 300 permits are renewed by August 1 of each year, but do not specify how many are available when exactly 300 permits are renewed.

The proposed regulatory changes would clarify that when the number of renewed permits is 300 no new permits would be available.

Existing regulations provide that any person who held a valid abalone diving permit in the 1996-97 or 1997-98 license year is eligible to apply for any new sea urchin diving permits that may become available each year.

The proposed regulatory changes would repeal that provision.

Existing regulations do not specify where or when applications for any new sea urchin diving permits that may become available should be submitted.

The proposed regulatory changes would clarify when and where they shall be sent.

Existing regulations provide that any person who has possessed a sea urchin crewmember permit for the two immediately preceding permit years may apply for any new sea urchin diving permits that may become available. If there are more applicants than permits available, a drawing will be held to select the successful applicants. All applicants have an equal opportunity of being selected in the drawing.

The proposed regulatory changes would provide that any person who has possessed a crewmember permit for more than the required two years would be entered into the drawing one additional time for each year above the minimum two years that the applicant has possessed a crewmember permit, in any drawing held for new permits, up to a maximum of five entries in any drawing (for any person who has had a crewmember permit for seven or more years).

Existing regulations specify that any drawing held to issue new sea urchin diving permits will be held on the Wednesday nearest August 15 of each year.

The proposed regulatory changes would simplify that date to specify the drawing, if needed, would be held on the third Wednesday in August of each year.

Existing regulations provide that the season for red sea urchin fishing in May and September is open Monday, Tuesday, Wednesday and Thursday, except closed during the second full week; is open in June and August on Monday, Tuesday and Wednesday, except closed the second full week; and in July, north of the San Luis Obispo - Monterey county line is closed and that south of that line the season is open only on Monday and Tuesday, except closed for the second full week.

The proposed regulatory changes provide three options that would recast those open days from May to September.

All options would repeal some or all of the second full week closures in each month.

Option one would also make a uniform open season of Monday, Tuesday and Wednesday in May, June, August and September and a uniform statewide open season of Monday and Tuesday in July.

Option two would retain the existing four days per week open season in May and September and the existing three days per week open season in June and August and make a uniform statewide two days per week open season in July.

Option three would retain the existing open season in May and September in southern California (south of the Monterey-San Luis Obispo county line) while in northern California (north of the Monterey-San Luis Obispo county line) the second full week closure would be repealed and the days open for fishing would be reduced from Monday, Tuesday, Wednesday and Thursday to only Monday, Tuesday and Wednesday. In June and August the second full week closures would be repealed statewide and fishing days (Monday, Tuesday and Wednesday) would remain the same. In July the second full week closure in southern California and the full month closure in northern California would be repealed so fishing would be open statewide on Monday and Tuesday.

The Commission could adopt a single option or any part or parts of one or more of the three options in combination for the final regulations.

Existing regulations (subsection (n) of Section 120.7, Title 14, CCR) require sea urchin fishing log books to be sent to a Department office on or before the fifth day of each month. This requirement is in conflict with Section 190, Title 14, CCR that requires all fishing activity records to be submitted on or before the 10th day of the month following the month to which the records pertain.

The proposed regulatory changes would conform subsection 120.7(n) to Section 190.

Existing regulations require fishing activity records to be submitted on form DFG-120.7, October 1987.

The proposed regulatory changes would update the version of form DFG-120.7 to reflect the most recent version (DFG 120.7(5/99)), and incorporate that form by reference.

Existing regulations have several subsection numbering errors, typographic errors and a reference to the Department's former Long Beach office.

The proposed regulatory changes would correct the numbering errors and the reference to the former Long Beach office.

Section 190, Title 14, CCR contains a mailing address for the return of fishing activity records that is no longer valid.

The proposed regulatory changes would correct that mailing address.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in The Westin Long Beach, 333 E. Ocean Boulevard, Long Beach, California on Saturday, August 2, 2003 at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before July 25, 2003 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than August 2,

2003 at the hearing in Long Beach, CA. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Sherrie Koell at the preceding address or phone number. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.dfg.ca.gov/fg_comm.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Each sea urchin diver and processor is considered a business. The proposed regulatory changes will repeal a requirement that each permittee harvest at least 6,000 pounds of sea urchins every other year to renew their permit, but will not otherwise limit their ability to harvest that amount of sea urchins. The proposed regulatory changes will provide both sea urchin divers and sea urchin processors greater flexibility in managing the harvest and sale of sea urchins during the months of May through September.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: July 8, 2003

John M. Duffy
Assistant Executive Director